- 36. First, no recovery of unattributable costs should be allowed unless the ILEC shows that such costs must, in fact, be incurred (on a forward-looking, efficiency-maximizing basis) in common by or shared between the requested network element(s) and other network elements. Such a showing can be made by estimating the aggregate TSLRIC of all the outputs to which the unattributable costs are shared. In no circumstances should the Commission allow ILECs to satisfy this burden with data based on accounting allocations of embedded costs. Efficient costs are never measured by an ILEC's actual historical "overhead" expenditures.
- 37. Second, the difference between the TSLRIC of an aggregate of outputs, and the sum of the TSLRICs of each subset of those outputs, should be assigned to individual network elements on an efficient and competitively neutral basis. In particular, if the magnitude of the additional revenue to be recovered is too small to be of allocative or competitive significance, then a simple method of recovering the revenue through small markups applied to each network element could be justified by the litigation and other transaction costs avoided. Where the additional revenue is significantly large, the method of revenue recovery should be consistent with allocative and competitive efficiency.
- 38. Third, the sum of the incremental costs attributed to a requested network element (or elements), and the common or shared costs allocated to those elements, should never be allowed to exceed the stand-alone costs ("SAC") or TSLRIC of supplying those elements in the

^{6 (...}continued)

respect to the volume of business, and attributable to particular network elements. Regardless of the arbitrary accounting label, costs of this kind are properly included in the TSLRIC of the relevant network element.

⁷ In particular, an ILEC should not be allowed to charge other carriers a price for a network element that is higher than the imputed price charged by the ILEC to itself in the context of a competing offering.

aggregate. As explained above, SAC is the economic cost of supplying an output in isolation from other outputs. Prices in perfectly contestable markets can never exceed SAC.

III. THE HATFIELD MODEL APPLIES PROPER STANDARDS FOR ESTIMATING TSLRIC.

39. We have reviewed the costing model constructed for AT&T and MCI by Hatfield Associates, Inc., a telecommunications consulting firm. The object of the current Hatfield model is to estimate the total costs of building and operating a network, using efficient, forward-looking technology, to supply all "basic" narrowband services (essentially all local and intraLATA toll service, including carrier access) currently supplied in the United States. We conclude that the Hatfield Model follows reasonably closely the TSLRIC principles discussed in Section II. Where limitations on the availability of data have forced the designers of the model to use approximations that deviate from the theoretical ideal, the shortcuts adopted tend to overestimate, not underestimate, true TSLRIC. Further, the model is extremely flexible: whenever more specific or accurate values are available, they can readily be substituted for the values used currently.

A. The Hatfield model uses forward-looking costs, and estimates the costs of an efficient, cost-minimizing supplier.

- 40. The Hatfield model provides reasonable estimates of forward-looking, efficient costs.

 These first two of the TSLRIC tenets identified in Section II above -- forward-looking and efficiency-maximizing -- are, in our view, the critical elements of any legitimate TSLRIC study.
- 41. Our examination of the Hatfield Model investment calculations indicates that they entail a state-of-the-art data modeling approach in the construction of local loop, switching and transport, signalling, and operator services. In its assumptions, the model respects the requirement that the network (and the associated functions) be configured in a manner that

minimizes the costs of providing narrowband, local exchange services, including access and interconnection. Hatfield's sizing of the network and selection of its architecture reflect all of the end-user and carrier-to-carrier demands that are put on the local network. We also understand that the model uses realistic fill factors.

- 42. The modular nature of the model permits TSLRIC estimates that satisfy the assumption that CLECs may provide some of the network functions using their own facilities. In other words, the assumed demands need not be the same for each network element but, instead, can be adjusted to reflect the effects of facilities-based entry.
- 43. The most sophisticated modeling of investment cost is that for costs associated with the local loop. This is appropriate, for we understand that investment in the local loop accounts for nearly half of the aggregate investment outlays captured by the model. The model also reflects the most efficient switching technology, and uses actual discounted prices rather than list prices for switching equipment.
- 44. Where the model falls short of the theoretical ideal, it tends to err in the direction of overestimation, not underestimation, of actual TSLRIC. First, since adequate data are not yet available to model a local exchange that is fully optimized in the locations of wire centers and tandem switches, the model assumes that the existing locations are optimal. If and when the modeling of optimal locations becomes feasible, those locations can readily be substituted as inputs for existing switch locations. Such an adjustment should reduce, not increase, the TSLRIC estimates produced by the current version of the model.
- 45. Further, the population is assumed to be uniformly distributed in the model. In actuality, ILECs are free to deploy their networks to take advantage of population variations,

siting wire centers in or near population concentrations where possible. Here again, we understand that the model errs on the side of conservatism.

- 46. The model estimates forward-looking non-investment expenses by scaling down certain operating expense data from existing ILECs by the same ratio of efficient, forward-looking investment costs to historic ILEC investment costs. This approach is intuitively plausible insofar as competition in equipment supply markets encourages advances that lower both initial investment and operating expenses.
 - B. The Hatfield model estimates only the additional costs of providing the particular network elements except where data limitations result in the inclusion of costs shared between two or more network elements.
- 47. Our review of the model confirms that its estimates are limited, where possible, to the economic costs of particular network elements. First, the model uses an engineering rather than an accounting approach to cost estimation. Consequently, it does not need the arbitrary cost allocations that are inevitably associated with cost studies based on accounting cost data.
- 48. Second, network elements whose costs are estimated by the model are defined at a level of sufficient aggregation to include most costs that would otherwise be shared between individual network services. As a result, the share of total costs not captured in the pertinent TSLRICs is likely to be small. This minimizes the need for potentially arbitrary judgments about the proper treatment of various cost components.
- 49. Finally, where the model deviates from efficient incremental costing, the deviations are likely to overestimate, not underestimate, the resulting cost values. For example, the costs of local or tandem switching are estimated on a stand-alone basis, without regard for the economies of scope associated with production of switching along with signalling.

- C. The Hatfield model takes into account the entire demand of all uses and users of a network element or group of network elements.
- 50. The Hatfield model also deals with the entire demand for each network element, and the Hatfield unit cost estimates assume that switches, trunks, and other assets are sized to produce at least the levels of current output. The resulting TSLRIC values should therefore reflect most of the potential economies of scale permitted by current demand levels.
 - D. The Hatfield model recognizes significant geographic cost differences.
- 51. Finally, the Hatfield model is highly sensitive to variations in geography and population density. These differences can have potentially significant effects on estimated costs. Ignoring these divergences from average values can create incentives for inefficient entry, opportunities for anticompetitive cross-subsidies, and obstacles to full cost recovery for the ILECs. Our review of the Hatfield model indicates that the estimated TSLRICs are as free as possible from these distortions.

IV. ECONOMICALLY DEFENSIBLE PRINCIPLES OF RATE DESIGN ARE IMPORTANT.

- 52. We understand that the Commission has not limited its inquiry to appropriate principles for determining overall rate levels, but also proposes to adopt certain rate structuring principles. This is entirely proper and commendable, for even if rates are set at the right overall levels to recover true economic costs (as measured by appropriate TSLRIC modeling), inappropriate rate structures can impair competition, create inefficiencies, and harm consumers.
- 53. Most fundamentally, efficiency-maximizing network element rates should, to the extent reasonably possible, recover costs in a manner that reflects the way those costs are caused to be incurred. We understand, for example, that most or all of the costs attributable to a number of the ILEC network elements proposed to be unbundled are driven by capacity, not

usage. The costs of such network elements, which when purchased by a CLEC are essentially dedicated to that CLEC's use and not shared by others, can be attributed directly to that CLEC. Capacity charges are efficiency-maximizing in those circumstances.

- 54. Usage-sensitive charges, by contrast, could lead to inefficient outcomes at both ends of the usage spectrum when costs vary with capacity, not usage. First, because usage sensitive network element charges would exceed the true economic cost of serving high volume end users, such charges would encourage inefficient CLEC bypass of the ILEC network to serve those customers. At the same time, usage sensitive charges that did not reflect the true economic cost of serving low volume end users would encourage inefficient levels of CLEC purchases of the network elements in question.
- 55. Usage charges may be appropriate, however, when capacity costs cannot be readily attributed to particular CLECs or end users. An example is common transport. The conceptually correct cost driver is capacity, with its cost recovery apportioned among individual users or uses in manners sensitive to their share of total demand during peak periods. We understand that accurately determining the relative responsibility for total demand during these periods may be currently infeasible, however. Here, usage charges may make economic sense.
- V. PRIVATE NEGOTIATIONS ARE UNLIKELY TO ACHIEVE ECONOMICALLY DEFENSIBLE RATE LEVELS UNLESS THE COMMISSION PRESCRIBES THE BASIC PRINCIPLES FOR ECONOMIC COSTS.
- 56. The Commission has properly proposed to prescribe standards for determining TSLRIC, rather than leaving the pricing of network elements to unconstrained bargaining between ILECs and other carriers. Without a firm regulatory constraint, the ILECs' market power is likely to yield bargaining outcomes that are one-sided, anticompetitive, and inefficient.

- 57. A regulatory model with predictable litigation outcomes will increase the likelihood of settlement. If an ILEC and an entrant seeking to purchase network elements both know that the alternative to voluntary agreement is arbitration or adjudication based on TSLRIC pricing principles, both parties will be motivated to negotiate in good faith to reach an individualized agreement. Arbitration or adjudication by a third-party, no matter how wise and well-informed, is inevitably based on incomplete information and thus is almost certain to be less accurately shaped by commercial reality than is fully optimal. Determination of prices through private agreement can make both sides better off, for it can adapt itself effectively to the commercial details on the basis of more complete information. The potential gains from private negotiations can be realized, however, only if the regulatory backstop excludes the possibility of one-sided monopolistic outcomes.
- 58. Analogous experience in the railroad industry underscores these propositions. Major amendments to the Interstate Commerce Act in 1976 and 1980 left the standards for railroad rate regulation in flux for a number of years. By 1981, the Interstate Commerce Commission faced a backlog of several hundred unresolved rate disputes between railroads and shippers. In late 1983, the ICC proposed to limit rates with constraints based on forward-looking economic costs. The proposed standards were adopted in final form in 1985, were applied in a number of individual rate adjudications in the mid- and late 1980s, and were endorsed by the Railroad Accounting Principles Board in 1987. The new rate standards, while not costless to litigate, yielded generally predictable results. We understand that since the late 1980s, the overwhelming majority of rates have been established through voluntary contractual agreements rather than litigation.

VI. SUBSIDIES FOR UNIVERSAL SERVICE SHOULD BE KEPT TO A MINIMUM, AND IMPOSED IN A COMPETITIVELY NEUTRAL MANNER.

- 59. Whatever their intended purpose, deliberate deviations between network element prices and economic costs should be kept to a minimum. Deviations of this kind inevitably distort the allocation of resources, create incentives for inefficient facilities-based entry into areas with excessive carrier prices, and create artificial barriers to efficient facilities-based entry in areas where rates are too low.
- 60. A deliberate wedge between prices and TSLRIC is most likely to result from a decision to subsidize universal service or other regulatory goals. It is vital for the public interest that such deviations from competitive pricing be as small as possible, and that both funding and distribution be carried out through mechanisms that are *competitively neutral* -- i.e., that do not distort competition between the ILEC and its potential rivals.
- 61. To be competitively neutral, a regulatory wedge between prices and TSLRIC must never favor new entrants over incumbents, or *vice versa*. It must not benefit the proprietor of a bottleneck service over a rival that purchases the service. It must not favor firms that use one type of technology over another. The reason is obvious: any such departures from competitive neutrality tend to channel the business to inefficient suppliers. This inefficient allocation of business will raise costs, repress innovation and investments and -- as usual when competition is subverted -- needlessly burden consumers.
- 62. For example, competitive neutrality would plainly be violated if regulation permitted (or required) the ILEC to price some end-user service, call it "service L," below its TSLRIC, and to make up the financial difference through markups above TSLRIC on prices for carrier-to-carrier services. The below-cost pricing of service L by the ILEC, funded by overcharges for

services supplied to competing carriers, would prevent CLECs from competing successfully for the end-user service even if more efficient than the ILEC.

63. The same regulatory goal can be achieved in a competitively neutral fashion by (1) providing an equal subsidy to any firm that supplies a unit of service L; and (2) collecting funds for the subsidy from carriers or end users, irrespective of the identity of the supplier providing the service or serving the end user. With such a competitively neutral mechanism, the end users of service L would still face the (intended) below-cost price, and the end users of other services would still be the source of funding for the subsidy. Significantly, however, the competitively neutral subsidy would enable the most efficient carrier to succeed in serving the end-users of service L and the other services that help to support service L. And since each rival, including the ILEC, would receive the same unit subsidy by providing service L, each could price down to its own unit cost, less the subsidy. Just as in a subsidy-free environment, the low-cost supplier could win the business.

DECLARATION

I, William J. Baumol, declare under penalty of perjury that the foregoing is true and correct. Executed on May 15,1996.

Milling Chand

DECLARATION

I, Janusz A. Ordover, declare under penalty of perjury that the foregoing is true and correct. Executed on May 14. 1996

Jacung Ordsen

DECLARATION

I, Robert D. Willig, declare under penalty of perjury that the foregoing is true and correct Executed on May 15, 1996.

Robert Willey

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1949-92: Professor of Economics, Princeton University

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1953 Fellow, Econometric Society

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1992 Recipient, First Senior Scholar in the Arts and Sciences Award, New York University

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Member, Editorial Advisory Board, Supreme Court Economic Review

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Past President, American Economic Association (1981), Association of
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Various times on Boards of Editors for American Economic Review, Kyklos,

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